

**ZONING BOARD OF APPEALS
MINUTES OF MEETING
SEPTEMBER 27, 2012**

Town of Bedford
Bedford Town Hall
Lower Level Conference Room

PRESENT: Angelo Colasante, Chair; Kenneth Gordon, Vice Chair & Acting Clerk; Jeffrey Cohen; Jeffrey Dearing; Steven Henning; Todd Crowley

ABSENT: Brian Gildea, Clerk; Carol Amick

GUEST: Christopher Laskey, Code Enforcement Director

Mr. Colasante introduced himself and read the emergency evacuation notice. The Zoning Board of Appeals (ZBA) members and ZBA assistant introduced themselves.

PRESENTATION: Mr. Gordon, Acting Clerk, read the notice of the hearing.

PETITION #012-13 – Pamela Brown, Esq., for Nardelli Enterprises, Inc., at 1 Lavender Lane, seeks a Variance from Section 6.2.6 and from Table II: Dimensional Regulations of the Zoning By-Law to allow newly constructed foundation to remain within the front yard setback.

Ms. Brown greeted the Board and introduced Tony Nardelli, the property owner, and Alan Nelson, the land surveyor. She explained that Lavender Lane was the subdivision that was originally Princeton Properties and became Rosewood Lane, and the Rosewood Lane plan approved by the ZBA and the Planning Board was still in effect but had simply undergone a name change.

Ms. Brown stated that an error was made when the proposed plot plan was drawn for 1 Lavender Lane, in that the foundation was drawn 21 feet from the lot line. She said that it was a corner lot and therefore had two front yard setbacks (the sides facing the two streets) and two side yard setbacks. She stated that the error occurred because Mr. Nelson thought of this as a normal lot with the front yard on Concord Road, and simply lost track of the fact that Lavender Lane should have been measured as a front setback instead of a side setback; he marked the house at 21 feet, thinking that it was 6 feet away from the allowable 15 foot side yard setback, but in reality it was 14 feet too far into the 35 foot front setback line. She said this error passed over several sets of eyes, including the Building Inspector's, and they were here tonight requesting a Variance for relief from this mistake.

There was a detailed discussion of the site plan of the four Lavender Lane lots, and the dimensions and setbacks of the foundations.

Mr. Colasante asked why the subdivision plan approved by the Planning Board – which showed the four houses conforming on each lot – was not followed more stringently when the survey was being performed. Mr. Nelson replied that he never copies the work done by any previous surveyors when he performs his measurements for a new plot plan. He said that he started from scratch, and although all the measurements were correct, he mistakenly thought of the line as the side lot line rather than another front lot line. He apologized for the mistake and said that it was a simple error that he was embarrassed to have made.

Mr. Colasante asked whether Lot 2 had been laid out already. Ms. Brown replied that it had, and had been poured within the proper setbacks.

Mr. Cohen noted that the easement line had been established, so he was curious how that line was established but the property line was still marked incorrectly. Mr. Nelson said that it wasn't a measuring error, as all the dimensions and measurements were correct; he had simply been thinking of the property line as a side setback instead of a front setback. He noted that he was due to be out of the country the day after the plan was due, and the time pressure probably compounded the oversight.

Mr. Cohen asked when the foundation was poured. Ms. Brown replied that it was poured about a month ago.

Mr. Dearing said that the Board's main concern with a Variance is whether there is a hardship. Ms. Brown said that it would cost a great deal of money to move this foundation, so she felt that they had a case for the "significant financial hardship" on the property. Mr. Crowley stated that the fact that there was only a foundation poured indicated to him that the hardship was not necessarily as substantial as if the entire house had been built.

Mr. Gordon asked what the distance was between the side left side of the foundation and Lot 2. Ms. Brown replied that it was approximately 55 feet. Mr. Gordon noted that it was, therefore, possible to place the foundation within all the setbacks.

Mr. Henning asked about the concrete wall at the edge of Lavender Lane. Ms. Brown stated that it was a retaining wall because of wetlands.

Don Hughes, of 336 Concord Road, said he was confused how the measurements could be off if the access road and drainage retaining wall were already in place. Mr. Colasante replied that the measurements themselves were not wrong; the problem arose because the lot line was interpreted as a side setback instead of a front setback.

Mr. Colasante pointed out that Christopher Laskey, the Code Enforcement Director, was present at the meeting, and asked Mr. Laskey whether he wanted to add anything. Mr. Laskey said that Ms. Brown had nicely summed up the backstory of the project, but he would add that the main reason this error had escaped the local Building Inspector was because of the dashed line surrounding the proposed foundation shown on the certified

plot plan. He stated that the inspectors are always used to seeing a dashed line outlining the allowable setback envelope, but with this plot plan the dashed line had actually outlined the 20-foot drainage easement. He said that this dashed line and the statement by the surveyor on the plot plan that read, "I certify that the structures shown conformed to the Municipal zoning requirements," combined to cause this oversight. Mr. Laskey added that the foundation as-built process was in place for exactly this reason: to catch any mistakes with the placement of a house before it was actually built.

Brian Gildea, of 31 Buehler Road and a member of the Zoning Board, apologized for being late and explained that it was because of his lateness that he sat in the audience instead of at the meeting table. He said that in this instance there did not appear to be a hardship on the land; he asked the applicants what they considered as the hardship. Ms. Brown replied that she saw two hardships: the fact of the corner lot which led to confusion concerning the two side yards, and the cost of demolishing and reconstructing the foundation. She said that if this had been the next lot over, the house would be fully conforming, but since it was on a corner, it changed the allowable building envelope.

Mr. Gildea asked whether there would have been a hardship if the foundation had not already been placed on the lot, but permission was being sought. Ms. Brown said there would not have been, but it has become a hardship because the foundation had already been poured.

Mr. Gordon asked how long it would take to move the foundation. Ms. Brown said it would take approximately eight weeks. Mr. Nardelli said that the financial hardship consisted not only of moving the foundation but the money being lost each day that progress was not being made.

There was discussion about the comments made by the Town Engineer and the Conservation Administrator regarding the sewer line and rain garden.

With no further comments from those in attendance, Mr. Colasante closed the public hearing.

DELIBERATIONS:

To ensure that the seven conditions for a Variance had been met, Mr. Colasante went through the pieces of the "Variance puzzle":

A particular use must be sought. Mr. Colasante said that was clearly the case here.

The use must be for one not requiring a Special Permit. Mr. Dearing said that was also obvious in this case.

The project must affect a particular parcel or existing building. Mr. Colasante said that the lot in question was indeed one particular parcel.

The project is without detriment to the public good. Mr. Colasante said he didn't feel that there was necessarily any detriment to the public good with this foundation. Mr. Dearing said the only detriment he could see was that it opened the door for other builders seeking Variances for non-conformities in the future.

There will be no derogation from intent and purpose of the By-Law. Mr. Colasante said that the intent of the By-Law was to have 35 feet from any front lot line, and this foundation was poured at 21 feet from the line. He said that he would, therefore, have a difficult time reconciling that piece of the puzzle.

A substantial hardship must be displayed. Mr. Dearing said that the hardship has still not, at least to his mind, been proven. For clarification purposes, Mr. Henning asked how much the house would be sold for when it was completed. Mr. Nardelli said that a house of that size in Bedford would reach approximately one million dollars. Mr. Henning pointed out that if the cost of moving the foundation was in fact \$20,000 or even \$25,000, it would consist of about two or two and a half percent of the total cost.

There was further discussion about the hardship. Mr. Colasante said he didn't see enough of a hardship here to grant a Variance. The other members agreed.

There are conditions affecting the parcel or building but not the whole district. Mr. Cohen said that the main condition that had been cited regarding this requirement was that the lot had two front yards, but there are plenty of other homes in the neighborhood with two front yards – even another lot in this four-lot subdivision. He said he didn't see anything particularly special about this lot.

Mr. Cohen said the question he always asks himself in cases when a structure is built before ZBA approval is: Would he have granted this application if it came to the Board beforehand? He said the answer in this case was unequivocally no, because there was room on the lot for the foundation to be fully conforming, and there was no topography that prevented it, either. Ms. Brown said they would not have sought a Variance for this project up front; it was the fact that the foundation has been poured and will cost a great deal of money to remove that caused the hardship.

Mr. Colasante said this was an honest mistake, but he can't justify granting a Variance because of it. He said this wasn't a case of the foundation being off by a foot or two; it was off by 14 feet from the allowable setback. He added that the Board was struggling with at least three of the seven pieces of the Variance, and it would need to be in favor of all of those pieces to pass. Mr. Gordon, Mr. Dearing, Mr. Henning, and Mr. Crowley all agreed.

Mr. Colasante called for a motion.

MOTION:

Mr. Gordon moved to grant Pamela Brown, Esq., for Nardelli Enterprises, Inc., at 1 Lavender Lane, a Variance from Section 6.2.6 and from Table II: Dimensional Regulations of the Zoning By-Law to allow newly constructed foundation to remain within the front yard setback, substantially as shown on Exhibit A, plot plan dated 8/13/12, and Exhibit B, plot plan dated 5/13/12, registered by A.C. Nelson Cartography.

Mr. Cohen seconded the motion.

Voting in favor: None

Voting against: Colasante, Gordon, Cohen, Dearing, and Henning

Abstained: None

The motion did not carry, 0-5-0.

Mr. Colasante apologized to the applicant that the Variance could not be granted. He said he understood that marking the foundation too close to the lot line was an honest mistake, but unfortunately the Board's hands were tied in granting a Variance, as it has very strict restrictions. He wished the applicants luck with the rest of the project.

MOTION:

Mr. Cohen moved to adjourn the meeting.

Mr. Dearing seconded the motion.

Voting in favor: Colasante, Gordon, Cohen, Dearing, Henning, and Crowley

Voting against: None

Abstained: None

The motion carried unanimously, 6-0-0.

The meeting adjourned at 8:45 PM.

Angelo Colasante, Chair

Date

Respectfully Submitted,

Scott Gould
ZBA Assistant